

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of State and Local)	
Governments' Obligation to Approve)	
Certain Wireless Facility Modification)	
Requests Under Section 6409(a) of the)	
Spectrum Act of 2012.)	WT Docket No. 19-250
)	
Wireless Telecommunications Bureau and)	
Wireline Competition Bureau Seek Comment)	
on WIA Petition for Rulemaking,)	
WIA Petition for Declaratory Ruling and)	
CTIA Petition for Declaratory Ruling)	WT RM-11849
)	
Accelerating Wireless Broadband Deployment)	
By Removing Barriers to)	
Infrastructure Investment)	WT Docket No. 17-79
)	
Accelerating Wireline Broadband Deployment)	
By Removing Barriers to)	
Infrastructure Investment)	WC Docket No.17-84

MOTION FOR EXTENSION OF TIME TO FILE REPLY COMMENTS

Pursuant to 47 C.F.R. § 1.46, The National League of Cities; the United States Conference of Mayors; the National Association of Telecommunications Officers and Advisors; the National Association of Counties; Clark County, Nevada; Cobb County, Georgia; Howard County, Maryland; Montgomery County, Maryland; the City of Ann Arbor, Michigan; The City of Arlington, Texas; the City of Bellevue, Washington; the City of Boston, Massachusetts; the City of Burlingame, California; the Town of Fairfax, California; the City of Gaithersburg, Maryland; the City of Greenbelt, Maryland; the Town of Hillsborough, California; the City of Kirkland, Washington; the City of Lincoln, Nebraska; the City of Los Angeles, California; the City of Monterey, California; the City of Myrtle Beach, South Carolina; the City of New York,

New York; the City of Omaha, Nebraska; the City of Portland, Oregon; the City of San Bruno, California; the Michigan Coalition to Protect Public Rights-of-Way; the Texas Municipal League; the Texas Coalition of Cities for Utility Issues; City of Beaverton, Oregon; City of Carlsbad, California; City of Cerritos, California; City of Coronado, California; Town of Danville, California; City of Encinitas, California; City of La Mesa, California; City of Lawndale, California; League of Oregon Cities; League of California Cities; City of Napa, California; City of Oxnard, California; City of Pleasanton, California; City of Rancho Palos Verdes, California; City of Richmond, California; Town of San Anselmo, California; City of San Diego, California; City of San Marcos, California; City of San Ramon, California; City of Santa Cruz, California; City of Santa Monica, California; City of Solana Beach California; City of South Lake Tahoe, California; City of Thousand Oaks, California; City of Boulder, Colorado; Town of Breckenridge, Colorado; Colorado Communications and Utility Alliance; King County, Washington; City of Lacey, Washington; City of Olympia, Washington; City of Tacoma, Washington; Thurston County, Washington; and City of Tumwater, Washington (collectively, “Movants”) request an extension of time to file reply comments in the above-captioned proceedings. Currently, reply comments are due on or before November 13, 2019.¹ While the Commission previously extended the comment period in recognition of the complexity of the issues and need for response to factual allegations, it did not provide any additional time for reply comments. The issues are no less complex with initial comments submitted, and the record in need of review and response is substantial. For the reasons stated below, Movants respectfully

¹ Wireless Telecommunications Bureau And Wireline Competition Bureau Seek Comment On WIA Petition For Rulemaking, WIA Petition For Declaratory Ruling And CTIA Petition For Declaratory Ruling, Public Notice, WT Docket No. 19-250, WC Docket No. 17-84 and RM-11849 (Sept. 13, 2019) (“Public Notice”).

request that the time to file reply comments be extended twenty-one days, through December 4, 2019.

Although Commission policy provides that time extensions are not to be routinely granted,² the noticed reply comment schedule does not provide enough time to address the number and complexity of issues raised in the Petitions and comments, and effectively precludes interested parties from fully developing the record. The record, which spans four dockets, already contains at least 30 individual comments, totaling more than 1,700 pages of comments and related exhibits. In light of the significant volume of material submitted in initial comments, granting an extension of time to develop reply comments would serve the public interest by developing a more complete record on the highly technical issues raised in the Petitions.

I. Additional Time is Needed to Address the Numerous Issues and Significant Deviations from the Commission’s Existing Rules Raised by the Petitions and Voluminous Comments.

The Petitions seek *inter alia* to change the standards for the Commission’s existing “substantial change” test, impose new procedural requirements on local decision making, and alter the remedies for noncompliance with the Commission’s existing shot clock regulations for eligible facilities requests. Several requested changes conflict with prior Commission policies and representations made to the Fourth Circuit.³

These are not modest changes or mere “clarifications”. WIA raises five discrete issues, one of which involves a six-prong substantial change rule that took the Commission 20 paragraphs of text and 69 footnotes to articulate in the *2014 Infrastructure Order*. These

² See 47 C.F.R. § 1.46(a).

³ Compare, e.g., WIA Petition at 3 (requesting that the Commission find a change in overall height cannot defeat concealment so long as it remains within the cumulative height limit), with Brief for Respondent, *Montgomery Cty. v. FCC*, Nos. 15-1240 and 15-1284, Dkt. No. 60 at 40-41 (4th Cir. 2015) (explaining that a change in overall height to a facility concealed as a fake tree would defeat concealment if the new height would be disproportionate with natural trees in the vicinity).

significant deviations from the Commission's existing policies and regulations would also have harmful impacts on hundreds of new facilities deployed both before and after the *2014 Infrastructure Order*. For example, the proposal to require specific findings that could not possibly be known to local governments to enforce concealment elements in future modifications threatens to undo the careful efforts by communities to conceal new facilities. And to supplement the complex issues raised in its Petitions, WIA has now offered 13 more pages of legal arguments and analysis.

Local governments and other negatively impacted parties have submitted substantial comments in an attempt to fully and properly address the significant issues and rule changes posed by the Petitions, but those who support the Petitions have done the same; the record now totals more than 1,700 pages of comments and related materials. Interested parties need a reasonable period of time to review all this material and develop responses to new legal arguments, factual assertions, and other positions advanced in this complex record. The review of the current record and development of reply comments will require more time than currently afforded by the deadline set by the Commission.

II. The Comment Schedule Breaks with Prior Practice and is Inconsistent with Public Interest in the Commission's Infrastructure Deployment Proceedings

Public interest in the Commission's rulemakings on infrastructure deployment is high. In the *2014 Infrastructure Order*, the Commission received 241 comments. The Commission received no less than 860 comments in the *Mobilitie Petition*⁴ and 850 comments in the most recent *Small Cell Order* proceeding.⁵ In this proceeding, the Commission has received more than

⁴ *In the Matter of Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies. Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421.

⁵ *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79.

thirty comments thus far, totaling more than 1,700 pages. Unlike prior proceedings on related issues, virtually all the comments filed in this docket are longer and more complex standard filings with only one express filing to date.

Robust participation in these proceedings was due in part to the Commission establishing a more reasonable comment schedule. For instance, in the *Mobilitie Petition* the Commission originally provided interested parties double the time to develop reply comments as the Commission now establishes. In that proceeding, the Commission provided public notice on December 22, 2016, 37 days after Mobilitie filed the petition, and originally established February 6, 2017 and March 8, 2017 as the respective comment and reply dates – 46 days and 76 days after posting notice – providing a full month to review initial comments and develop replies.⁶ Here, the Commission posted noticed 17 days after receiving the WIA Petition, four days after receiving the CTIA Petition, and would conclude the entire comment schedule within 61 days – 15 days fewer than originally allotted in the *Mobilitie Petition*, and 45 days fewer than allotted after the Commission granted a reasonable extension. Instead of thirty days’ time for reply comments, the Commission now provides only fourteen.

This break from prior practice substantially reduces the opportunity for interested parties to participate and ignores the level of public interest in infrastructure deployment to more fully develop the administrative record.

III. Additional Time is Needed to Evaluate the Proposed Changes and Identify Unnamed Communities

The industry’s continued practice of alleging misconduct by unnamed local communities in their filings is sufficient to justify an extension of time. Communities alleged as “bad actors”

⁶ The Commission subsequently extended the comment and reply dates to March 8, 2017 and April 7, 2017 upon a motion for time extension. See *In the Matter of Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling*, Order, WT Docket No. 16-421 (Jan. 12, 2017).

in generic terms must have time to review the allegations, determine whether those allegations pertain to them, investigate the facts and present the Commission with the full story as to whether the allegations are true, whether any delay actually occurred, why a delay occurred (including industry failures that may have contributed) and defend current practices that do not hinder deployment. Communities specifically named in the Petitions and in the comments will likewise need additional time to fully address the claims against them.

The Commission's Public Notice "invite[s] interested parties to submit factual data and economic analysis of the costs and benefits of the specific declaratory rulings, clarifications, and rule amendments discussed in the Petitions (or any alternative policies)"⁷ Data-driven analysis that fully evaluates the implications of such rule changes or clarifications cannot reasonably be completed under the current comment periods, and data-driven decisions simply cannot be achieved through a reliance on abstract, unverified allegations. Local governments are attempting to collect and present the kinds of data requested by the Commission but the information is spread across the country and the short timeframe allotted makes the data-gathering process difficult to accomplish in time to present the results in a meaningful way. Data-driven responses to allegations raised in comments are even more difficult to develop when only two weeks are allotted for reply comments. The current reply comment deadline does not afford maligned communities a meaningful opportunity to respond, which will undercut the credibility of any decisions the Commission may reach.

⁷ *WIA Petition for Rulemaking, WIA Petition for Declaratory Ruling and CTIA Petition for Declaratory Ruling*, Public Notice, WT Docket No. 19-250, WC Docket No. 17-84, RM-11849 (WTB/WCB 2019).

IV. Additional Time Is Required if the BDAC Concerns Are to Be Heard

The Commission has relied heavily upon the input of the BDAC as it has considered prior wireless infrastructure proposals. At the September 19, 2019 BDAC meeting, both local government and industry representatives supported the formation of a working group to provide the Commission with input into the Petitions.

Providing the additional time requested in this Motion would make such BDAC input, and further public comment on BDAC input, possible and argues in favor of granting such an extension.

V. CONCLUSION

For the reasons stated above, the Commission should grant an extension of time to file reply comments through and including December 4, 2019.

Respectfully submitted,

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